ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION IV

CA 06-992

February 28, 2007

ONESIMO SAMARIPAS
APPELLANT

V.

ARKANSAS DEPARTMENT
OF HUMAN SERVICES
APPELLEE

AN APPEAL FROM PULASKI COUNTY
CIRCUIT COURT [JN 2004-1293]

HON. RITA W. GRUBER, JUDGE

AFFIRMED; MOTION GRANTED

This is a no-merit appeal terminating the parental rights of Onesimo Samaripas, who claims to be the father of T.K.S. Appellant's attorney filed a motion to withdraw as counsel and submitted a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Servs*., 359 Ark. 131, 194 S.W.3d 739 (2004)(*Linker I*) and Ark. Sup. Ct. R. 4-3(j)(1). Appellant was furnished a copy of his counsel's brief but submitted no pro se points for reversal. The only ruling in this case that was adverse to appellant was the ultimate decision to terminate his parental rights. Because counsel's brief adequately explains why an appeal from the termination determination would be wholly frivolous, we grant counsel's motion to withdraw and affirm the termination of appellant's parental rights. *See Linker I*, *supra*.

An order forever terminating parental rights must be based upon clear and convincing evidence. *See Moore v. Ark. Dept. of Human Servs*., 95 Ark. App. 138, __ S.W.3d. __ (May 3, 2006). Clear and convincing evidence is that degree of proof that will produce in the factfinder a firm conviction regarding the allegation sought to be established. *Id*. In

resolving the clearly erroneous question, we must give due regard to the opportunity of the trial court to judge the credibility of witnesses. *Id*.

The trial court here terminated appellant's parental rights based on Ark. Code Ann. § 9-27-341(c)(2)(A)(Supp. 2005), which provides that:

> termination of the relationship between a juvenile and one (1) parent shall not affect the relationship between the juvenile and the other parent if those rights are legally established.
>
> If no legal rights have been established, a putative parent must prove that significant contacts existed with the juvenile in order for the putative parent's rights to attach.

The evidence in this case clearly supported that termination was proper because appellant never established significant contacts with the child. T.K.S. testified positive for cocaine at birth, prompting appellee Arkansas Department of Human Services to take the infant into emergency custody. Appellant lived with T.K.S.'s mother when the child was born; he knew when and where T.K.S was born; and he had no doubt that the child was his. Yet, he never took any steps to legitimize the child (such as registering with the Putative Father Registry) or to provide for his care. Appellant gave no indication at the termination hearing that he ever spent any time with the child or provided for him in any way.

Further, only nine days after T.K.S. was born, appellant was arrested for maintaining a drug premises in his home where he lived with the child's mother (presumably the same home where the child would have gone had he been released from the hospital into the mother's custody). Appellant claimed that he never had a chance to contribute to T.K.S.'s welfare because he went to prison shortly after the child was born.

Although imprisonment imposes an unusual impediment to a normal parental relationship, it is not conclusive on the termination issue. *See Crawford v. Ark. Dept. of Human Servs.*, 330 Ark. 152, 951 S.W.2d 310 (1997). Rather, in deciding whether to terminate the parental rights of a party, the trial court has a duty to look at the entire picture of how that parent has discharged his duties as a parent, the substantial risk of serious harm the parent imposes, and whether or not the parent is unfit. *In re Matter of Adoption of*

K.M.C., 62 Ark. App. 95, 969 S.W.2d 197 (1998). Thus, the fact that a parent is incarcerated does not automatically preclude a finding that he is a fit parent, but neither does it toll his parental responsibilities. *See Malone v. Ark. Dep't. of Human Servs.*, 71 Ark. App. 441, 30 S.W.3d 758 (2000). Our courts recognize that even when a parent is incarcerated, he can still solicit visits from his child and contact the child with cards, letters, or small gifts. *Zgleszewski v. Zgleszewski*, 260 Ark. 629, 542 S.W.2d 765 (1976).

The record in this case is devoid of any indication that appellant attempted to establish or maintain contact with T.K.S. before or during his incarceration. Even after appellant was provided notice of the termination proceedings, he did not take any steps to secure a home for T.K.S. or to establish visitation. *Compare In re Adoption of SCD*, 358 Ark. 51, 186 S.W.3d 225 (2004)(holding the putative father "legitimated" his child by signing the Putative Father Registry weeks prior to child's birth and took significant steps to prepare for having child with him if he was awarded custody, including interviewing day-care centers and looking into finding a pediatrician and health insurance for child).

In addition, the evidence supports that adoption was an appropriate placement plan for T.K.S. and that the child was likely to be adopted because he was healthy and was only two years old at the time of the termination hearing. *See* Ark. Code Ann. § 9-27-341(b)(1)(A), (b)(3)(A)(i). The evidence also supports that contact with appellant would be harmful to the child and that termination of appellant's parental rights was in the child's best interests. *See* Ark. Code Ann. § 9-27-341(b)(3)(A)(ii). It is apparent from the record that T.K.S. had no contact with appellant and that appellant has a history of violence and drug-related offenses. Even assuming appellant becomes a fit parent while incarcerated, he will not be released from jail for at least five more years. Such a lengthy delay in securing a permanent home for T.K.S. runs counter to the intent of the juvenile code to provide permanency for a child within a reasonable period of time, as viewed from the child's

perspective. *See* Ark. Code Ann. § 9-27-341(a)(3). On these facts, the trial court did not err in terminating appellant's parental rights.

Affirmed; motion to be relieved granted.

PITTMAN, C.J., and VAUGHT, J., agree.